

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

* * *

BRANDON LEE GARZA,

Case No. 3:23-cv-00527-MMD-CLB

Petitioner,

ORDER

v.

WARDEN, ELY STATE PRISON, et al.,

Respondents.

11 In this habeas case brought under 28 U.S.C. § 2254, the Court entered an order
12 directing Petitioner Brandon Lee Garza to file an amended petition to correct certain
13 defects in his initial habeas pleading. (ECF No. 3.) Rather than file an amended petition,
14 Garza has filed a motion to voluntarily dismiss this case. (ECF No. 6 (“Motion”).)

Under Federal Rule of Civil Procedure 41(a)(1)(A)(i), “the plaintiff may dismiss an action without a court order by filing . . . a notice of dismissal before the opposing party serves either an answer or a motion for summary judgment.” Voluntary dismissal under this rule requires no action on the part of the Court and divests the Court of jurisdiction upon the filing of the notice of voluntary dismissal. See *United States v. 475 Martin Lane*, 545 F.3d 1134, 1145 (9th Cir. 2008) (describing the consequences of voluntary dismissals under Federal Rule of Civil Procedure 41(a)(1)(A)). Rule 41(a)(1) has been found to apply in the habeas context where a respondent had not yet filed an answer to the petition. See *Clark v. Tansy*, 13 F.3d 1407, 1411 (10th Cir. 1993); *Williams v. Clarke*, 82 F.3d 270, 273 (8th Cir. 1996).

25 In this case, Respondents have not filed a response to the petition. Thus, Garza's
26 Motion serves as a notice of dismissal that was effective upon its filing and without a court
27 order.

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It is therefore ordered that Garza's motion to dismiss this case (ECF No. 6) is granted. The petition for writ of habeas corpus (ECF No. 4) is dismissed without prejudice.

It is further ordered that other pending motions (ECF Nos. 5, 7) are dismissed as moot.

The Clerk of Court is further directed to enter judgment accordingly and close this case.

DATED THIS 8th Day of January 2024.

2024.

MIRANDA M. DU
CHIEF UNITED STATES DISTRICT JUDGE